TRIAL PROCEDURES
for cases before

THE HONORABLE TIMOTHY S. HOGAN
United States Magistrate Judge

A lawsuit in which you represent a party has been assigned to this Court for trial. These procedures are designed to handle your case promptly and efficiently without impeding your ability to present your client's case fully and fairly. The following is an index of the subjects contained herein:

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I. CALENDAR ORDER

Shortly after the case is referred to the Magistrate Judge, counsel will participate in a scheduling conference to determine convenient dates. A Calendar Order will be issued immediately following the scheduling conference. The Calendar Order will include: (1) a deadline for amending the complaint to add parties; (2) a deadline for the completion of discovery; (3) a deadline for all dispositive motions; (4) deadline for disclosure of expert reports and trial witnesses; (5) a date for the final pretrial conference; and (6) a trial date.

The assignment date contained in the Calendar Order will be final, subject to illness of counsel or named litigants, or other recognized emergencies. The filing of a motion for continuance or any other motion, until ruled upon by the Court, will not modify the dates in the Calendar Order or those subsequently set by the Court.

II. DISCOVERY

The deadline for discovery will be set in the Calendar Order. Discovery requests must be made at such time that responses thereto are due before the discovery deadline. For example, if the time for response to a discovery request under the appropriate rule is 30 days, the discovery request must be made at least 30 days before the discovery deadline.

Motions to compel discovery responses due before the deadline will be entertained by the court after the deadline has lapsed. Pursuant to the Federal and Local Rules of Civil Procedure, the parties must exhaust all extrajudicial means of resolving discovery disputes before filing a motion to compel discovery. For more clarification, see Fed. R. Civ. P. 37(a)(2); S.D. Ohio Civ. R. 37.1.

Counsel may, by agreement, continue discovery beyond the deadline. In this case, no supervision of or intervention in the continued discovery will be made by the court unless there is a showing of extreme prejudice. No trial setting will be vacated as a result of information acquired in the continued discovery.

The filing of a dispositive motion does not toll the running of the discovery deadline. Discovery will not be stayed during the pendency of a dispositive motion unless there are exceptional circumstances.

III. DISCOVERY AND OTHER CONFERENCES

The Court encourages counsel to resolve discovery disputes by use of an informal discovery conference. Counsel shall first discuss and attempt to resolve the problem by agreement. If counsel's efforts toward an amicable solution have failed, counsel should contact the Courtroom Deputy, Barbara Crum by telephone, in order to schedule an informal conference with the Court. Before the conference, counsel should prepare and deliver to chambers a brief, **no more than 1 page in length**, setting forth arguments for or against the requested discovery. The Court will listen to oral arguments and will respond with a written Order no later than 5:00 p.m. the following business day. The Court's order will incorporate the written briefs of the parties in lieu of the presence of a court reporter.

IV. BRIEFS AND MEMORANDA

Counsel are reminded of Rule 7.2(3) of the United States District Court for the Southern District of Ohio:

Limitation Upon Length of Memoranda

Memoranda in support of or in opposition to any Motion or application to the Court should not exceed twenty (20) pages. In all cases in which memoranda exceed twenty (20) pages, counsel must include a combined table of contents and a succinct, clear and accurate summary, not to exceed five (5) pages, indicting the main sections of the memorandum, the principal arguments and citations to primary authority made in each section, as well as the pages on which each sections and any sub-sections may be found.

V. DISCLOSURE OF WITNESSES PRIOR TO THE DISCOVERY DEADLINE

All witnesses to be called during a party's case-in-chief must be disclosed within sufficient time to permit discovery. Unless otherwise ordered, plaintiff will disclose to defendant the names of all expert witnesses at least sixty (60) days prior to the Discovery Deadline, and defendant will disclose to plaintiff the names of all expert witnesses at least forty-five (45) days prior to the Discovery Deadline, and both parties will disclose the names of all other case-in-chief witnesses at least thirty (30) days prior to the Discovery Deadline. No additional witnesses may be listed in the Final Pretrial Order except by permission of the Court. Witnesses whose testimony is offered solely for impeachment purposes need not be listed.

VI. FINAL PRETRIAL CONFERENCE

Within approximately one month prior to trial, a Final Pretrial Conference will be held. The date of such conference will be set forth in the Calendar Order.

Counsel are directed to submit a proposed joint Final Pretrial Order directly to the Magistrate Judge at least three (3) days prior to the Final Pretrial conference. The Final Pretrial Order shall be in the form set forth in Part XIII of this trial preparation packet.

Trial counsel must attend the Final Pretrial Conference. No attorney may act as trial counsel who has not attended the final pretrial conference, unless permission of the Court is granted.

All Motions in Limine shall be filed no less than fourteen (14) days prior to the Final Pretrial Conference date. Any responsive memorandum shall be filed no less than seven (7) days prior to the Final Pretrial Conference date.

A. Preparation of Exhibits Before Final Conference

Prior to the Final Pretrial Conference, counsel for each of the parties will assemble all exhibits to be used at the trial and make available to opposing counsel either the original exhibits or copies thereof. Two copies of the bound trial exhibits must be submitted to the Court seven (7) days prior to the trial. Counsel are required, however, to list all exhibits in the Final Pretrial Order.

The following procedure will be followed for marking exhibits:

1. Plaintiff's exhibits will be identified by numbers in sequence, starting with one; each number will be preceded with the letter "P".

2. Defendant's exhibits will be identified by numbers in sequence, starting with one; each number will be preceded with the letter "D".

3. Joint exhibits will be identified by numbers in sequence, starting with one; each number will be preceded with the letter "J".

4. Additional party's exhibits will be identified by numbers in sequence, starting with one; each number will be precede with the party's initial.

Exhibits will be placed in binders and each exhibit will be tabbed. Trial

exhibits will remain in the custody of the Courtroom Deputy Clerk during the trial. At least three (3) sets of bound and tabbed exhibits are necessary: one for trial exhibits, one copy for the court, and one copy for opposing counsel.

Objections to the admissibility of any exhibit may be made by written motion prior to trial. Ordinarily, rulings on the admissibility of evidence will be made during the trial.

B. Exhibits During Trial

Ordinarily, the Court does not permit exhibits to be displayed to the jury during trial. Exceptions are made for "smoking gun" type exhibits that are of extreme importance and demonstrative exhibits that have been discussed with opposing counsel and the Court in advance of the trial date. Once identified, exhibits can be offered during recesses or at the conclusion of the offering party's case in chief. The Courtroom Deputy keeps a running log of exhibits as they are identified and distributes copies to counsel for their use at the appropriate time.

VII. REQUESTED JURY INSTRUCTIONS

Agreed requests for jury instructions must be submitted to the court at least seven (7) days prior to trial. Only in the event that counsel cannot agree will separate instructions be accepted. Each requested instruction must be numbered and presented on a separate 8 ½" x 11" sheet of paper. In addition to written instructions, the parties shall submit instructions on a 3.5 inch high density diskette in Word Perfect 6.1 or 8.0 format. Requested instructions must contain a citation of authority upon which counsel relies. Requested instructions that do not contain such citations will be rejected. Separate jury instructions will only be accepted when the parties cannot agree.

The Court uses as sources for charges, among others, Devitt and Blackmar's FEDERAL JURY PRACTICE AND INSTRUCTIONS, OHIO JURY INSTRUCTIONS, and PATTERN INSTRUCTIONS of the FIFTH CIRCUIT. The Court is bound by determinations of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit. Where appropriate, determinations by the Supreme Court of Ohio, or in the absence thereof, determinations by the Ohio District Court of Appeals will be deemed binding.

The Court will consider as persuasive authority decisions by the United States Courts of Appeals for circuits other than the Sixth Circuit, decisions by the United States District Courts, decisions by Supreme Courts of other states and decisions by Appellate Courts of other states, in that order.

VIII. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon conclusion of trials to the Court, counsel shall file Findings of Fact and Conclusions of Law which counsel believe the Court should make.

IX. BENCH TRIALS

The Court does not conduct settlement conferences in cases wherein no jury demand has been filed, but refers those cases to Magistrate Judge Sherman for settlement conference(s). The Court prefers, but does not require, trial briefs, to be filed in advance of trial. The Court does require Findings of Fact and Conclusions of Law to be filed by all parties within a two-week period following trials to the bench. The Court may adopt or modify any of the proposals or may prepare its own Findings of Fact and Conclusions of Law.

X. COURTROOM PROCEDURES

A. Settlement after Final Pretrial Conference

The parties are expected to contact the Court with any settlement agreement by 3:00 pm on the day prior to the day voir dire is scheduled to begin. Failure to do so will result in the assessment of the cost of the jury pool, to be shared equally among the parties. These costs include a fee of $40 per juror plus mileage and parking.

B. Initial Explanation of the Case

The Court encourages counsel to resolve discovery disputes by use of an informal discovery conference. Counsel shall first discuss and attempt to resolve the problem by agreement. If counsel's efforts toward an amicable solution have failed, counsel should contact the Courtroom Deputy, Barbara Crum by telephone, in order to schedule an informal conference with the Court. Before the conference, counsel should prepare and deliver to chambers a brief, **no more than 1 page in length**, setting forth arguments for or against the requested discovery. The Court will listen to oral arguments and will respond with a written Order no later than 5:00 p.m. the following business day. The Court's order will incorporate the written briefs of the parties in lieu of the presence of a court reporter.

C. Trial Objections

Anticipated objections to the opponent's evidence should be brought to the Court's attention in advance of trial either by means of a Motion in Limine or at the Final Pretrial Conference. This will allow a more considered resolution of the issue(s) and eliminate side bar conferences or lengthy recesses, both of which break the flow of the trial and waste the jury's time. Counsel may not argue an objection in the presence of the jury, but may asked to be heard at side bar.

D. Court Sessions

Trials will start promptly at 9:30 a.m. on the first day and at 9:00 a.m. on all succeeding days. The morning session will continue until approximately 12:15 p.m. The afternoon sessions will start one and one-half hours after the end of the morning session and will end at approximately 4:30 p.m. There will be a morning recess at approximately 10:45 a.m. and an afternoon recess at approximately 3:00 p.m.

It is expected that the parties and all counsel will be seated at the counsel tables prior to the above times when the Court is called into session.

E. Counsel Tables

Plaintiff in all civil cases and the United States in all criminal cases will occupy the counsel table near the jury box. The defendant in both civil and criminal cases will occupy the counsel table farthest from the jury box. Additional or separate tables will be provided upon request for multiple plaintiffs, defendants, or third parties.

F. Jury Voir Dire

The parties may consent to deposition by the Magistrate Judge presiding at a trial by jury. In such cases, counsel will be permitted to conduct the voir dire after preliminary questions by the Judge. The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Each prospective juror is assigned a number by the Jury Clerk. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial. Counsel are encouraged to obtain the jurors' questionnaires on the Thursday preceding trial.

Eight prospective jurors will be seated in the jury box. The Court suggests that the parties agree to accept the unanimous verdict of Six or Eight jurors so that

the Seventh and Eights jurors are "voting alternates."

The Court conducts a brief voir dire examination and permits counsel to conduct their own voir dire examination. Counsel's portion is subject to time limitations and is limited to approximately 1 hour per side. The Court prefers that counsel address the jury collectively, but recognizes the occasional need to follow up with individual questions to a particular juror. The asserting of challenges will occur in open court and not at side bar. The panel of prospective jurors will not be in the courtroom during the process of asserting challenges.

Counsel must address their questions to the entire panel in general and may not question an individual juror, unless justified. Counsel will not be permitted to question jurors individually regarding background information, (this information is contained in the questionnaires). Counsel may inquire regarding any omission in a juror's answer to the questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the questionnaire.

G. Challenges to the Jury Panel

The entire panel may be challenged for cause. This will be conducted outside the presence of the jury at the conclusion of the voir dire examination. The Court may suggest that a certain juror or jurors be challenged for cause. Counsel may, of course, agree or disagree and may raise an additional challenge or challenges for cause.

H. Peremptory Challenges

The Court prefers a blind strike system where counsel exercise their 4 peremptory challenges simultaneously from a list of prospective jurors, but will permit an alternate exercise of peremptory challenges if counsel agree on that method. Peremptory challenges that are exercised simultaneously, in writing, by all counsel during a recess of the proceedings will be received and combined by the Courtroom Deputy. She will seat the jury as ultimately selected. In the event the blind strike system is used, the Courtroom Deputy prepares the master list of jurors from the lists containing the strikes and formally seats the jury panel. Counsel will ordinarily be permitted fifteen minutes for this process.

I. Presentation of the Case

There are no specific rules governing the manner of interrogation, addresses by counsel and presentation of exhibits. Counsel may present their case in the

style with which they are comfortable, so long as they do so in a dignified and respectful manner and abide by the Code of Professional Responsibility.

J. Method of Presentation for Exhibits

Counsel should make every effort to keep and hold the attention of the jury by avoiding such well-known "techniques" as re-redirect and re-recross examination of witnesses as well as repetitive questions. Various forms of audio-visual aids are helpful in maintaining interest. Reading from depositions, especially lengthy ones, can create a problem in this area. Ruffling of papers during videotaped depositions is amplified by microphones and annoying to juries. If such deposition testimony is to be read, the Court encourages counsel to schedule same for the morning hours. The Court discourages monotone presentations and does not object to counsel's moving away from the lectern, while questioning witnesses, as long as the court reporter can be accommodated. The Court encourages attorneys to develop a factual basis for final argument during cross examination and to avoid the often time consuming and fruitless attempts to impeach the opponent's witnesses into submission.

K. Electronic Media

Counsel shall be responsible for presentation of any video-taped depositions/trial testimony. A transcribed copy must be provided to the Court by Counsel three (3) days before presentation of the video. Any objections will be ruled on prior to the presentation of the video. Counsel is further responsible for editing those portions where objections have been sustained. The Court will not be responsible for any technical support. Counsel may, however, contact Chambers regarding the availability of equipment and courtroom capabilities.

Any testimony to be received by video conferencing must be arranged through the Courtroom Deputy. Counsel must inform the Courtroom Deputy at least three (3) days prior to the beginning of trial and provide the following information:

1. Name of the witness;
2. Nearest Federal Courthouse for the witness to appear; and
3. Date of appearance

L. Jury Instruction Conference

Prior to summation in jury cases, the Court will hold a conference with

counsel in chambers on the record, for the following purposes: The Court will have prepared a draft jury charge, which will be discussed in detail with counsel. Objections may be made at this time, and the Court may then modify the jury charge. Counsel will know, before closing arguments, the final composition of the charge. The Magistrate Judge prefers to charge the jury before closing arguments. See Rule 51 of the Federal Rules of Civil Procedure and Rule 30 of the Federal Rules of Criminal Procedure.

Counsel and the Court will determine the length of closing arguments. Plaintiff's counsel must use at least half of the allotted time in opening argument, and must use closing argument only to rebut defendant's closing argument.

XI. FOREIGN COUNSEL

Counsel in good standing of the bar of the highest court of any state may, upon motion of the trial attorney for any party, be permitted to appear and participate as counsel or co-counsel in the Southern District of Ohio for purposes of representation in a specific case. Such permission will be conditional only and may be withdrawn at any time for failure to observe the rules of this district and the general Orders of this Court. See S.D. Ohio Civ. R. 83.5(d).

XII. FINAL JUDGMENT

Where the parties consent thereto, the Magistrate Judge will enter final judgment following the conclusion of a jury trial or upon filing of Findings of Fact and Conclusions of Law after a bench trial. The Court may stay entry of final judgment until after resolution of post trial issues, such as attorney's fees. Appeal will be made to the United States Court of Appeals for the Sixth Circuit, unless the parties agree to appeal to the District Judge.

At the conclusion of the trial of nonconsent actions, the Magistrate Judge will prepare a Report and Recommendation upon the matters submitted by the Order of Reference, including Findings of Fact and Conclusions of Law, where required. The report will be filed with the Clerk of Courts, who will mail notice of the filing to the parties. Within ten (10) days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. The District Judge will then determine whether to adopt or reject the Report and Recommendation.

XIII. ATTORNEY FEES

Any party who intends to apply to the Court for the payment of his or her attorneys fees by an opposing party shall file successive applications every 120 days generally indicating the legal services rendered and the amount charged to date. These applications shall be filed in accordance with the Federal and Local Rules of Civil Procedure and shall be served upon all parties. Failure to file any one of the applications shall be considered a release of the opposing party from the payment of such fees.

The Court shall consider a party's successive applications for attorney fees after a verdict or judgment has been rendered and shall limit its consideration to the reasonable compensation for the necessary services rendered and the reasonable and necessary expenses incurred by one trial attorney in the case. Absent extraordinary circumstances, fees for all other services including, but not limited to, services rendered by co-counsel, shall not be chargeable to the opposing party but shall be the sole responsibility of the party on whose behalf the services were rendered.

XIV. FINAL PRETRIAL ORDER

A Final Pretrial Order following the format provided at Appendix A must be jointly prepared and submitted by counsel to the Magistrate Judge at least three (3) days prior to the date of the Final Pretrial Conference.

XV. APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

xxx,
Plaintiff(s)

v. Civil Case No.
(Hogan, J.)

xxx,
Defendant(s)

FINAL PRETRIAL ORDER

This matter came before the Court at a Final Pretrial Conference held on _____ at _____, pursuant to Fed. R. Civ. P. 16.

I. APPEARANCES:

1. For Plaintiff:

2. For Defendant:

II. NATURE OF ACTION AND JURISDICTION

1. This is an action _____.

2. The jurisdiction of the Court is invoked under Title ____, United States Code, Section _____.

3. The jurisdiction of the Court is (is not) disputed.

4. The parties (have) (have not) consented to entry of final judgment by the United States Magistrate Judge.

III. TRIAL INFORMATION

1. The estimated length of trial_____ is days.

2. Trial to (the court) (the jury) has been set for

3. Initial explanation of the of the case (See page 8 above).

IV. AGREED STATEMENT AND LISTS:

1. General Nature of the Parties' Claims:

    a. PLAINTIFF CLAIMS: (suggested type of simple language)

        "Plaintiff asserts in Count 1 a right of recovery for defendant(s) negligence as follows:"

        "Plaintiff asserts in Count 2 a right of recovery for defendant(s) wanton and willful misconduct as follows:"

        "Plaintiff asserts in Count 3 a right to punitive damages and attorney fees for the following reasons:"

    b. DEFENDANT CLAIMS: (suggested type of simple language)

        "Defendant denies liability as asserted in Counts for the following reasons:"

        "Defendant, as an affirmative defense, asserts that plaintiff was contributorily negligent as follows:"

        "Defendant, as an affirmative defense, asserts that plaintiff's claims are outlawed by the Statute of Limitations for the following reasons:"

    c. ALL OTHER PARTIES, CLAIMS:

2. Uncontroverted Facts: (suggested language)

    "The following facts are established by admissions in the pleadings or

by stipulations of counsel (set forth and number uncontroverted or uncontested facts)."

3. Issues of Fact and Law: (suggested language)

a. "CONTESTED ISSUES OF FACT: The contested issues of fact remaining for decision are:" (list)

b. "CONTESTED ISSUES OF LAW: The contested issues of law in addition to those implicit in the foregoing issues of fact are:" (set forth) OR

"There are no special issues of law reserved other than those implicit in the foregoing issues of fact."

4. Witnesses: (suggested language)

a. "Plaintiff will call or will have available for testimony at trial those witnesses listed on Appendix B hereof."

b. "Defendant will call or will have available for testimony at trial those witnesses listed on Appendix C hereof."

c. "_____ will call or will have available for testimony at trial those witnesses listed on Appendix D hereof."

d. "The parties reserve the right to call nonlisted rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel."

INSTRUCTIONS: Leave to call additional witnesses may be granted by the Court in unusual situations. Counsel seeking such leave must file a Motion to Add Witnesses and serve a copy upon opposing counsel with names, addresses, and an offer of proof of such witness's testimony at least five (5) days prior to trial.

5. Expert Witnesses: (suggested language)

"Parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed to opposing counsel:

Plaintiff
Defendant"

6. Exhibits:

The parties will offer as exhibits those items listed herein as follows:

a. Joint Exhibits - Appendix E

b. Plaintiff Exhibits - Appendix F

c. Defendant Exhibits - Appendix G

d. Third-Party Exhibits - Appendix H

INSTRUCTIONS: The above exhibits will be deposited with the Court at trial. Exhibit markers obtainable from the Courtroom Deputy Clerk should be affixed to the upper right corner. In all cases, two additional sets of all exhibits for use of the Court and opposing counsel will be required. All sets should be bound and tabbed.

7. Depositions: (suggested language)

"Testimony of the following witnesses will be offered by deposition/video tape;" OR

"No testimony will be offered by deposition/video tape."

INSTRUCTIONS: Depositions must be filed by the time of Final Pretrial Conference with the portions to be read noted therein. An opportunity will be given to opposing counsel to read any omitted portion. Counsel will be notified at trial of rulings on all objections.

8. Discovery: (suggested language)

"Discovery has been completed;" OR

"The following provisions have been made for discovery."

9. Pending Motions: (suggested language)

"The following motions are pending at this time;" OR

"There are no motions pending at this time."

10. Miscellaneous Orders:

INSTRUCTIONS: Set forth any orders not properly includable elsewhere.

V. MODIFICATION: (suggested language)

"This Final Pretrial Order may be modified at the trial of this action, **or prior** thereto, to prevent manifest injustice. Such modification **may** be made by application of counsel, or on motion of the Court."

VI. SETTLEMENT EFFORTS: (suggested language)

"The parties have made a good faith effort to negotiate a settlement;" OR

"Settlement negotiations are still ongoing at this time."

VII. PROPOSED INSTRUCTION - TRIAL TO A JURY

Pursuant to Section **IV** of this trial packet, Jury Instructions are to be submitted seven (7) days prior to trial.

_____ _____

Date TIMOTHY S. HOGAN
U.S. MAGISTRATE JUDGE

_____ _____

Date Counsel for Plaintiff

_____ _____

Date Counsel for Defendant

APPENDIX B

PLAINTIFF WITNESSES

NAME ADDRESS

APPENDIX C

DEFENDANT WITNESSES

NAME ADDRESS

APPENDIX D

THIRD PARTY WITNESSES

NAME ADDRESS

APPENDIX E

JOINT EXHIBITS OF PLAINTIFF AND DEFENDANT

APPENDIX F

EXHIBITS OF PLAINTIFF

APPENDIX G

EXHIBITS OF DEFENDANT

APPENDIX H

EXHIBITS OF _____

(Use numbers prefixed by initial of party)